

Volume I  
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Exhibits: None

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

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:  
M2 CONSULTING, INC., :  
Plaintiff, :  
:  
vs. : Civil Action  
:  
MRO SOFTWARE, INC., and CRAIG : No. 03-12589-GAO  
:  
NEWFIELD, :  
Defendants. :  
:  
-----x

DEPOSITION OF DAVID A. BIGLER, a witness  
called on behalf of the Defendants, taken pursuant  
to the Federal Rules of Civil Procedure, before  
Linda A. Walsh, Registered Professional Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the Offices of Gesmer Updegrove  
LLP, 40 Broad Street, Boston, Massachusetts, on  
Friday, October 7, 2005, commencing at 10:05 a.m.

PRESENT:

Fee, Rosse & Lanz, P.C.  
(By Mark S. Resnick, Esq.)  
321 Boston Post Road, Sudbury, MA 01776,  
for the Plaintiff.

Gesmer Updegrove LLP  
(By Lee T. Gesmer, Esq.)  
40 Broad Street, Boston, MA 02109, for the  
Defendants.

\* \* \* \* \*

1     yourself, Mr. Bevington?

2             A.     Bob Parker.

3             Q.     Mr. Parker, and a fourth person whose name  
4     you don't recall?

5             A.     From the Houston office.

6             Q.     An MRO --

7             A.     MRO employee.

8             Q.     Okay. And where did you play golf?

9             A.     Grand Hyatt in Orlando. They have a  
10     links-type course there.

11            Q.     Was any of M<sup>2</sup>'s business with MRO discussed  
12     that day?

13            A.     The previous evening. Mr. Bevington and I  
14     and Mr. Parker had dinner together. The guy from  
15     Houston was late getting in so he didn't  
16     participate. And then the following day after golf  
17     at lunch we discussed some things again.

18            Q.     What business was discussed the evening  
19     before?

20            A.     The sales force of MRO selling hosted  
21     solutions of Maximo.

22            Q.     What was said on that subject?

23            A.     We basically said, you know, "We know we  
24     are rolling along on this. When is it going to

1 happen?" And Parker said, "Well, we have got some  
2 things to be resolved still." He was basically  
3 noncommittal but certainly didn't deny that anything  
4 was afoot.

5 Q. What other business subjects were discussed  
6 that evening?

7 A. It seemed to me like we talked about how  
8 MRO was doing and what their stock was doing, things  
9 of that nature, mostly general business discussions.

10 Q. Was there -- other than the sales force  
11 selling M<sup>2</sup>'s -- M<sup>2</sup> --

12 A. The hosted solution.

13 Q. -- the hosted solution of M<sup>2</sup>'s -- the hosted  
14 solution of Maximo, was there any other discussion  
15 of the relationship between MRO and M<sup>2</sup> that night?

16 A. I think yes, in general terms. You know,  
17 Rick did most of the talking. I just listened  
18 basically. You know, "We want to develop this  
19 relationship with you guys. We think it's a perfect  
20 fit." He was selling. You know, that's what Rick  
21 does is sell. And Bob listened and made a few  
22 comments, and as I said, was not -- he didn't say  
23 "Wait a minute. You guys are going too fast" or he  
24 didn't say "There is no deal." He said, "Yes, we

1 are working on it," which kind of led me to believe  
2 that things were moving along.

3 Q. So Mr. Bevington -- I mean, you knew at  
4 this point that the second agreement had been signed  
5 before that evening?

6 A. I am sure I did.

7 Q. And you as a board member of M<sup>2</sup> expected MRO  
8 to roll out this service to its sales force?

9 A. Yes.

10 Q. And there would be dozens of people, direct  
11 salespeople selling this service --

12 A. Yes.

13 Q. -- to the world?

14 A. Yes. 200 feet on the street or something  
15 like that.

16 Q. And Mr. Bevington was anxious for this  
17 rollout to take place?

18 A. Yes. Not "the world," by the way. North  
19 America.

20 Q. North America, okay. But Mr. Bevington was  
21 anxious for this to happen, and he was politely  
22 prodding Mr. Parker to get going on this?

23 A. Yes.

24 Q. Is that right?

1 A. Yes.

2 Q. And Mr. Parker was noncommittal. Do you  
3 remember any specific discussion between the three  
4 of you at the table that evening, any of the  
5 specific words that were spoken?

6 A. Only the issues that needed to be worked  
7 out, and that was how to compensate the MRO salesmen  
8 for their efforts and how to recognize -- how does  
9 MRO recognize this revenue. The accounting people  
10 were working on it, and they needed to work that  
11 out.

12 Q. So the issue of how to compensate the MRO  
13 salespeople, was that discussed in any detail?

14 A. No.

15 Q. It was just raised as a topic?

16 A. Yes. It was an issue that had to be worked  
17 out.

18 Q. Mr. Parker said, "We need to work out that  
19 issue"?

20 A. Yes.

21 Q. And the same with the recognition of  
22 revenue, it was an issue that needed to be worked  
23 out?

24 A. Right, right.

1 Q. Have you exhausted your memory of what was  
2 said on this subject we have been discussing, the  
3 rollout of hosted Maximo by M<sup>2</sup>? Have you exhausted  
4 your memory of what was said that evening on that  
5 subject?

6 A. I think so.

7 Q. You don't have any more specific  
8 recollection than you have told me about right now?

9 A. No.

10 Q. Now, the next morning the fourth appeared?

11 A. Yes.

12 Q. He wasn't there at all the evening before?

13 A. That's correct. He got in midnight or  
14 something like that.

15 Q. You played golf?

16 A. Yes.

17 Q. And you had lunch after golf?

18 A. We had lunch.

19 Q. And then after lunch people disbursed in  
20 their own directions?

21 A. Yes.

22 Q. And --

23 A. One specific thing I remember is Bob Parker  
24 had a Blackberry, and I had never seen a Blackberry

1 before. I was quite impressed.

2 Q. We call them "crackberries" here.

3 What business discussion took place over  
4 lunch after the golf game?

5 A. I'd say very little. It was mostly social.  
6 Parker was on his Blackberry over by the window  
7 about half the time, and the rest was pretty social.

8 Q. So there was no discussion about the  
9 rollout, commissions?

10 A. I think probably at the end we said, "Yes,  
11 we are still waiting for you guys to work this stuff  
12 out. Thank you very much for coming, and see you  
13 around."

14 Q. And is that your best memory of those  
15 discussions at lunch that day?

16 A. Well, there were some specific projects  
17 discussed between this fourth guy from Houston and  
18 Rick, and I can't remember what they were. But it  
19 seemed like this guy had a few problems with what  
20 Rick was doing and Rick had some problems with what  
21 he was doing, and they agreed to work it out or try  
22 to work it out.

23 Q. But that had nothing to do with the  
24 rollout?

1 A. No, no.

2 Q. Did Mr. Bevington make any comments to you  
3 after this -- any comments to you alone during this  
4 day or after this lunch about how things had gone?

5 A. Yes. We talked about it. We thought they  
6 went well. We thought we were, you know, moving it  
7 along.

8 Q. So a month later you spoke to Mr. Parker on  
9 the phone?

10 A. Let me back up. About two weeks later Rick  
11 Bevington called me in Florida and said, "I think  
12 I'm getting the runaround. How about if you call  
13 Bob Parker. Maybe he'll tell you something he won't  
14 tell me." I said, "Okay. Give me his number." I  
15 called him.

16 Q. Before we get to the call, did  
17 Mr. Bevington explain to you what he meant by  
18 "getting the runaround"?

19 A. He said, "Things are not moving any further  
20 than they did when we discussed it at the golf  
21 outing and maybe you can get them to budge or find  
22 out what's happened."

23 Q. So the rollout had not happened?

24 A. It has not happened. So I called Parker.

1 I get his voice-mail. I leave a voice-mail saying  
2 who I was and my phone number and what I wanted to  
3 talk about. I hung up. I thought, well, that's  
4 probably the last I'll ever hear from him. He's a  
5 busy guy. He doesn't know me from Adam except for  
6 this one time we played golf. About two weeks later  
7 he calls me back, and that was the telephone call  
8 you are referring to.

9 Q. And what was discussed during that call?

10 A. I said, "Where are we on" -- "What's going  
11 on," and he said, again, "We've got the compensation  
12 issues. Our accounting people are working on it.  
13 We are getting close. We have got the recognition  
14 of revenue issue. They are getting close on that.  
15 And there are a couple of minor things we want Rick  
16 to do, which I don't think will be a problem," and  
17 then I said, "Well, that sounds like we are moving  
18 along. How long is it going to be? 30 days or so?"  
19 He said, "At the maximum, probably less." I said,  
20 "Thanks very much for returning my call. I  
21 appreciate it. Next time you are in Atlanta give me  
22 a call, and we'll tee it up at Atlanta Country  
23 Club." Because this guy is an avid golfer I thought  
24 he would like a chance to do that.